



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1998

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1444

Dear Ms. Soldano:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116136.

The Texas Department of Transportation (the "department") received a request for "copies of the construction drawings (as-builts) for IH 37 South, .4 miles south of Mathis Rd. and 4.4 miles south of San Antonio." You assert that the requested construction drawings are protected from disclosure pursuant to section 552.103(a) of the Government Code. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental entity must meet both prongs of this test for information to be excepted under section 552.103(a).

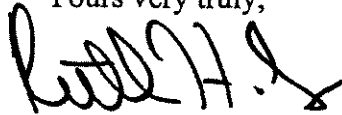
You submitted to this office a notice of claim letter, dated August 2, 1996, concerning an accident that occurred in 1995. In Open Records Decision No. 638 (1996) at 5, this office determined that a governmental body establishes that litigation is reasonably anticipated when it receives a notice of claim from an attorney *and* represents to this office that the notice complies with the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code, or any applicable city statutes or ordinances. However, we note that a suit for personal injuries must generally be brought under the Texas Tort Claims Act within two years of the date the cause of action arose. *See* Civ. Prac. & Rem. Code § 16.003 (general two-year statute of limitations for personal injuries and wrongful death); Civ. Prac. & Rem. Code § 101.006 (Texas Tort Claims Act does not affect defenses, immunities, and jurisdictional bars otherwise available). Suits that are brought under the act and outside of

the applicable statutory period can be dismissed. *Dalon v. City of DeSoto*, 852 S.W.2d 530 (Tex. App.--Dallas, 1992, no writ); *Bishop v. Texas*, 577 S.W.2d 377 (Tex. Civ. App.--El Paso 1979, no writ).

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. The accident that was the basis of the claim occurred more than two years ago without a lawsuit being filed against the department. It appears that litigation is pending concerning the accident, but there is no indication that the department is a party to that litigation or anticipates being a party to that litigation. See Open Records Decision No. 638 (1996) at 4 (governmental body asserting section 552.103(a) exception must provide this office updates concerning changes in circumstances of underlying litigation). Thus, we conclude that, in this situation, the department has not met its burden of showing that section 552.103(a) is anticipated.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 116136

Enclosures: Submitted documents

cc: Mr. Alex May
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(w/o enclosures)